

NOTE: The following is a draft response to a request for an advisory opinion prepared for consideration by the Citizen's Ethics Advisory Board. It does not necessarily constitute the views of the Board.

TO: Board Members

FROM: Brian J. O'Dowd, Assistant General Counsel

RE: Draft Response to RAO # 4577

DATE: December 12, 2006

INTRODUCTION

The Citizen's Ethics Advisory Board (Board) issues this advisory opinion in response to a request submitted by an assistant ethics enforcement officer with the Office of State Ethics (OSE). In that request, he asked whether, under the Codes of Ethics, chapter 10, parts I and II, of the General Statutes, the Enforcement Division of the OSE must seek Board approval to settle a complaint before a finding of probable cause.

BACKGROUND

The following background is relevant to this opinion. In Public Acts 2005, No. 05-183 (P.A. 05-183), which was made effective on July 1, 2005, the legislature amended General Statutes §§ 1-82a (e) and 1-93a (e), the only provisions in the Codes of Ethics that reference stipulation agreements or settlements. Specifically, in § 7 of that public act, the legislature amended § 1-82a (e), a provision in the Code of Ethics for Public Officials, by adding the following italicized language:

The judge trial referee shall make public a finding of probable cause not later than five business days after any such finding. At such time the entire record of the investigation shall become public, except that the Office of State Ethics may postpone examination or release of such public records for a period not to exceed fourteen days for the purpose of reaching a stipulation agreement pursuant to subsection (c) of section 4-177. Any such stipulation agreement or settlement shall be approved by a majority of those members present and voting.

(Emphasis added.)

In § 18 of the same public act, the legislature amended § 1-93a (e), the corresponding provision in the Code of Ethics for Lobbyists, to include the following italicized language:

The judge trial referee shall make public a finding of probable cause not later than five business days after any such finding. At such time the entire record of the investigation shall become public, except that the Office of State Ethics may postpone examination or release of such public records for a period not to exceed fourteen days for the purpose of reaching a stipulation agreement pursuant to subsection (c) of section 4-177. *Any stipulation agreement or settlement entered into for a violation of this part shall be approved by a majority [of] its members present and voting.*

(Emphasis added.)

QUESTION

The assistant ethics enforcement officer asked whether, under the Codes of Ethics, the Enforcement Division of the OSE must seek Board approval to settle a complaint before a finding of probable cause.

ANALYSIS

The answer to the question at hand is a matter of statutory construction, the fundamental objective of which “is to ascertain and give effect to the apparent intent of the legislature.” (Internal quotation marks omitted.) *Perodeau v. Hartford*, 259 Conn. 729, 735, 792 A.2d 752 (2002). In seeking to ascertain that intent, we are mandated by General Statutes § 1-2z to consider:

the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

I. Code of Ethics for Lobbyists

Addressing first the Code of Ethics for Lobbyists, the pertinent provision, § 1-93a (e), was amended by P.A. 05-183, § 18, to include the following language: “*Any stipulation agreement or settlement entered into for violation of this part shall be approved by a majority [of] its members present and voting*”; (emphasis added); “this part” meaning the Code of Ethics for Lobbyists, chapter 10, part II, of the General Statutes. The plain language of § 1-93a (e), therefore, manifests a clear legislative intent that the Board is to approve any stipulation agreement or settlement entered into (either before or after a finding of probable cause) for a violation of the Code of Ethics for Lobbyists. Thus, we conclude that, for purposes of violations of the Code of Ethics for Lobbyists, the Enforcement Division must seek Board approval to settle a complaint both prior and subsequent to a finding of probable cause.

II. Code of Ethics for Public Officials

In § 1-82a (e), the counterpart in the Code of Ethics for Public Officials, the language mirrors that in § 1-93a (e) in all but its final sentence. That sentence, which was added to § 1-82a (e) in P.A. 05-183, § 7, reads as follows: “Any *such* stipulation agreement or settlement shall be approved by a majority of those members present and voting.” (Emphasis added.) “The word ‘such’ has been construed as an adjective referring back to and identifying something previously spoken of; the word naturally, by grammatical usage, refers to the last antecedent.” *LaProvidenza v. State Employees’ Retirement Commission*, 178 Conn. 23, 27, 420 A.2d 905 (1979); see also 2A J. Sutherland, *Statutory Construction* (6th Rev. Ed. Singer 2000) § 47.33, p. 369 (“[r]eferential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent”). Textually, then, the use of the word “such” to modify “stipulation agreement or settlement” refers to the previous use of that language in the statute, that is, to the last antecedent. The last antecedent to which it can reasonably refer is a stipulation agreement under § 4-177 (c)¹ entered into *after* a finding of probable cause. Thus, the plain language of § 1-82a (e) suggests a legislative intent that, for purposes of violations of the Code of Ethics for Public Officials, the Board is to approve any stipulation agreement or settlement entered into *after* a finding of probable cause.

But with regard to stipulation agreements or settlements entered into *before* a finding of probable cause, § 1-82a (e)—indeed, the entire Code of Ethics for Public Officials—is silent. Nevertheless, we are mandated by § 1-2z to examine the relationship of § 1-82a (e) to other statutes. Further, we must presume that the legislature, in enacting that provision, “did so in view of existing relevant statutes and intended it to be read with them so as to make one consistent body of law. . . . *This is particularly so when all statutes are dealt with in the same legislative session.*” (Citations omitted; emphasis added; internal quotation marks omitted.) *International Business Machines Corp. v. Brown*, 167 Conn. 123, 135, 355 A.2d 236 (1974).

If the legislature had intended the Board to approve all stipulation agreements and settlements entered into (either before or after a finding of probable cause) for violations of the Code of Ethics for Public Officials, then it could have used language in § 1-82a (e) similar to that used in § 1-93a (e)—which was amended not only in the same legislative session as was § 1-82a (e), but under the same legislative enactment. Instead, in § 1-82a (e), it chose to use different language, and “we must presume that when the legislature uses different language, the legislature intends a different meaning of one statute from the other.” (Internal quotation marks omitted.) *State v. Denson*, 67 Conn. App. 803, 811, 789 A.2d 1075, cert. denied, 260 Conn. 915, 797 A.2d 514 (2002). Thus, the plain language of § 1-82a (e) and its relationship to § 1-93a (e) suggests a legislative intent that

¹Section 4-177 (c), a provision in the Uniform Administrative Procedure Act, provides as follows: “Unless precluded by law, a contested case may be resolved by stipulation, agreed settlement, or consent order or by the default of a party.”

the Board is to approve any stipulation agreement or settlement entered into after—but not before—a finding of probable cause for a violation of the Code of Ethics for Public Officials. Consequently, we conclude that, for purposes of violations of the Code of Ethics for Public Officials, the Enforcement Division must seek Board approval to settle a complaint only after a finding of probable of cause.

CONCLUSION

It is the opinion of the Citizen's Ethics Advisory Board that, for purposes of violations of the Code of Ethics for Lobbyists, the Enforcement Division must seek Board approval to settle a complaint both prior and subsequent to a finding of probable cause; but that, for purposes of violations of the Code of Ethics for Public Officials, the Enforcement Division must seek Board approval to settle a complaint only after a finding of probable of cause.